ANG TOH WAH v. GOH LOH & ANOR.

[O.C.J. (Choor Singh J.) October 10, 1975]
[Singapore — Civil Suit No. 2050 of 1973]

Tort — Negligence — Labourer injured in the course of employment — Determination of who was the employer at time of accident — Liability to provide a safe system of work — Employers vicariously liable for negligent act of servant.

Employment — Employer — Vicariously liable for negligent act of servant.

The plaintiff, in this case, was employed by the first defendant as a labourer on a lighter owned by the first defendant who had a contract with the second defendants to transport the latter's crushed granite from Pulau Ubin to Ponggol. The granite had to be unloaded by means of a grab-crane operated by a servant of the second defendants. The method of unloading was for the crane driver to swing the boom of the crane over the lighter, lower the grab into the lighter and when the grab had grabbed a load of granite it was lifted and swung over to the yard where the load of granite was dropped. This process was repeatedly done by the crane-driver until the lighter was almost empty. The plaintiff assisted the unloading of the lighter by raking the remnants of the granite on the floor of the lighter into a heap to enable the crane-driver to pick them up. The accident occurred when the crane-driver lowered the grab to pick up a load of granite. The plaintiff was raking the remnants of granite into a heap on the outer front half of the hold of the lighter when the grab came and hit the plaintiff's head causing him to fall. The grab fell on his right leg causing a compound fracture of the right tibia and fibula.

One of the contentions raised by the crane-driver was that he had seen the plaintiff leave the hold of the lighter but never saw the plaintiff return to the hold of the lighter. He only realised that someone was injured in the lighter when he heard shouts from one of the workers.

The plaintiff claimed against the first and the second defendant company damages for personal injuries and loss suffered as a result of the aforesaid accident.

Held: (1) the accident was caused by the negligence of the crane-driver. Having seen the plaintiff leave the hold of the lighter, he should have kept a look-out for his return to the hold of the lighter;

(2) at the time of the accident, the plaintiff was not doing the work of his employer, the first defendant, but was doing the work of the second defendant company;

(3) the unloading of the lighter at Ponggol was the responsibility of the second defendant company which had the direction and control of the unloading operation and they were the only ones entitled to give orders as to how the work of unloading the lighter should be done;

(4) the first defendant had nothing to do with the unloading of the granite from the lighter and there was therefore no question of his having to provide a safe system of work for the plaintiff which was the responsibility of the second defendant company;

(5) the accident occurred because of the negligent way in which the crane driver worked his crane. The second defendant company, his employers, were therefore vicariously liable for his negligence.

Case referred to:-

(1) *Mersey Docks and Harbour Board* v. *Coggins & Griffith (Liverpool) Ltd. & Anor.* [1947] A.C. 1.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

William Jansen for the first defendant.

P. Selvadurai for the second defendant.

Choor Singh J.: The plaintiff's claim in this suit was for damages for personal injuries and consequential loss suffered by him on March 6, 1971 when he was injured while working on board a lighter anchored at Ponggol.

The facts are these. The plaintiff was employed by the first defendant as a labourer on a lighter owned by the first defendant who had a contract with the second defendant to transport the second defendant's crushed granite from Pulau Ubin to Ponggol.

On March 6, 1971 the lighter on which the plaintiff was employed arrived at Ponggol fully loaded with crushed granite. It anchored alongside the defendant's yard where the granite had to be unloaded and unloading commenced by means of a grab crane operated by a servant of the second defendant. The crane was positioned some ten feet away from the water's edge. The operator of the crane sat in the cabin of the crane from which position he could not see the bottom of the lighter. The method of unloading was for the crane driver to swing the boom of the crane over the lighter, lower the grab into the lighter, and when the grab had grabbed a load of granite, it was lifted and swung over to the yard where the load of granite was dropped. This procedure was repeated by the crane driver without anybody's assistance but when the lighter was almost empty, the remnants of the granite on the floor of the lighter were raked together into a heap by the plaintiff to enable the crane driver to pick up this heap and thus complete the unloading of the lighter.

The accident happened when the crane driver lowered the grab to pick up a load of granite. The plaintiff was raking the remnants of granite into a heap on the outer front half of the hold of the lighter, which portion of the lighter had been unloaded, when the grab came and hit the plaintiff's head causing him to fall. The grab fell on his right leg causing a compound fracture of the right tibia and fibula.

At the time of the accident, there were only four persons at the scene of the accident, namely, Wong Yam Poo the crane driver, the plaintiff, one Goh Lim who is a brother of the first defendant, and one Goh Tiong who was from another lighter and had come to help Goh Lim to repair the rudder. Goh Lim and Goh Tiong were at the rear of the lighter repairing the rudder. They did not see the accident. They heard the plaintiff's screams and rushed to his help. They saw the plaintiff lying on the floor of the lighter with injuries on his right leg and shouting in agony. He was carried ashore and later sent to hospital.

The crane driver's evidence was that he had seen the plaintiff leave the hold of the lighter and go to the cabin of the lighter; that after that he continued lifting loads of granite for 20 to 30 minutes; that he never saw the plaintiff returning to the hold of the lighter and that he was surprised when he heard shouts from Goh Lim that someone was injured in the hold of the lighter. The crane driver contended that at the time of the accident he did not know that the plaintiff was in the lighter; that it was low tide and the lighter was lower than the jetty; that his crane was ten feet away from the edge of the jetty and that from his cabin he could see the bottom of the lighter at the outer edge but could not see it at the inner edge. Under cross-examination the crane driver admitted

that he never checked whether or not the plaintiff had come back into the hold of the lighter. He explained that he never expected the plaintiff to come back because there was enough granite on the inner side of the lighter for him to work on. He contended further that the plaintiff should have notified him when he came back into the hold of the lighter.

The plaintiff denied leaving the hold of the lighter and going to the cabin. He maintained that he was in the lighter all the time. Goh Lim admitted that when he and Goh Tiong were repairing the rudder at the back of the lighter, behind the cabin, the plaintiff did come there to see what they were doing and left a short while later.

It was contended on behalf of the second defendant that once the need for raking the remnants had arisen, the labourers on the lighter would commence raking and as soon as they had raked the granite into a heap, one of them would signal to the crane driver to lower the grab. The plaintiff denied that it was his duty to give a signal to the crane driver. But his fellow worker Goh Lim admitted it. It was suggested to the plaintiff that when the grab was lowered, the plaintiff or his fellow worker would then catch hold of the grab and direct it to the heap or pile of granite. This was denied by the plaintiff and also by Goh Lim.

The evidence showed that the accident was caused by the negligence of the crane driver. Having seen the plaintiff leave the hold of the lighter, he should have kept a look-out for his return to the hold of the lighter. The crane driver failed to notice that the plaintiff had returned to the hold and was working on raking the remnants into a heap on the outer front edge of the lighter. He admitted that he could see the bottom of the lighter at the outer edge and yet he failed to see the plaintiff working there. He was negligent in lowering the grab at the spot where the plaintiff was working because he had no reason to lower it at that spot. The plaintiff had not yet completed raking the remnants into a heap nor had he given any signal for the grab to be lowered at that spot. The crane driver was working on unloading the inner portion of the lighter and had negligently swung the grab to the outer front portion where the plaintiff was working. In my opinion the accident was due entirely to the negligence of the crane driver and he was the sole cause of the accident.

It was submitted that the first defendant was also liable because he had not provided a safe system of work for the plaintiff who was his servant. In my opinion the plaintiff was at the time of the accident the servant of the second defendant company because he was doing work for them and not for his general employer the first defendant. According to the contract (Exhibit P1) signed betwen the first defendant and the second defendant for the transportation of the granite from Pulau Ubin to Ponggol, the unloading of the granite at Ponggol was the responsibility of the second defendant. This was also admitted by Wong Yam Poo the crane driver and the second defendant's supervisor Phillip Sng. The first defendant merely supplied the lighter and two labourers to bring the lighter from Pulau Ubin to Ponggol point. The first defendant had nothing to do with the unloading of the lighter at Ponggol.

I accepted the evidence of Goh Lim, that at the end of the unloading, he and his co-worker the plaintiff merely helped to rake the remnants of the granite into a heap so as to help the crane driver to complete the unloading because the second defendant company had only one person to unload the lighter *i.e.* the crane driver. The fact that in raking the remnants of granite into heaps, the plaintiff and Goh Lim were merely helping the second defendant company was admitted by their supervisor, Phillip Sng. Under the circumstances, at the time of the accident, the plaintiff was not doing the work of his employer, the first defendant, but was doing the work of the second defendant company and was therefore their servant.

In *Mersey Docks and Harbour Board* v. *Coggins & Griffith (Liverpool) Ltd. and another*,[1] which was a crane case which went to the House of Lords, Lord Parker said, at page 17: —

> "It is true that in most cases no orders as to how a job should be done are given or required: the man is left to do his own work in his own way. But the ultimate question is not what specific orders, or whether any specific orders, were given but who is entitled to give the orders as to how the work should be done."

In this case, the unloading of the lighter at Ponggol was the responsibility of the second defendant company which had the direction and control of the unloading operation and they were the only ones entitled to give orders as to how the work of unloading the lighter should be done. The first defendant had nothing to do with the unloading of the granite from the lighter and there was therefore no question of his having to provide a safe system of work for the plaintiff who was at the time of the accident helping the crane driver in his work of unloading the lighter. It was for the second defendant company to provide a safe system of work. They should have provided a signalman. The accident happened because of the negligent way in which the crane driver worked his crane, and it followed that his employers the second defendant company were liable for his negligence. The crane driver made a mistake with which the first defendant had nothing to do and consequently he was not liable.

General damages having been agreed between all the parties in the sum of $6,500 I assessed special damages at $3,800 and entered judgment for the plaintiff against the second defendant in the sum of $10,300 and costs as taxed. The plaintiff's claim against the first defendant was dismissed with costs to be paid by the second defendant.

Order accordingly.

Solicitors: *Murphy & Dunbar; Donaldson & Burkinshaw; Rodyk & Davidson.*